

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ERIC WATKINS §
VS. § CIVIL ACTION NO. 1:11cv599
FOOD SERV. STAFF MEMBERS, ET AL. §

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Eric Watkins, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to *Bivens v. Six Unknown Agents of Bureau of Narcotics and Dangerous Drugs*, 403 U.S. 388 (1971). The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont Texas, for consideration pursuant to applicable orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this lawsuit. The magistrate judge recommends dismissing this lawsuit for failure to state a claim upon which relief may be granted.

Plaintiff filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections in relation to the pleadings and the applicable law.

The magistrate judge concluded that plaintiff's claims were barred by the applicable statute of limitations. Plaintiff asserts the running of the period of limitations should have been tolled while he was exhausting his administrative remedies.

Pursuant to 42 U.S.C. § 1997e(a), prison inmates are required to exhaust available administrative remedies before filing a lawsuit in federal court. As a result of this statute, the running of the period of limitations is tolled while an inmate is exhausting his administrative remedies. *Harris v. Hegmann*, 198 F.3d 153, 158 (5th Cir. 1999). However, plaintiff was released from prison before filing this lawsuit. As a result, neither the exhaustion requirement set forth in Section 1997e(a), nor the tolling provided for in *Harris* apply.

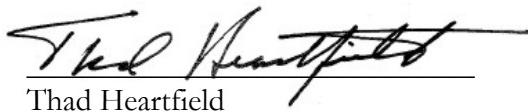
The website operated by the Bureau of Prisons states plaintiff was released from prison on June 6, 2010. At that point, plaintiff was no longer burdened by the statutory requirement that he

exhaust administrative remedies before filing his lawsuit. The period of limitations applicable to plaintiff's claims expired on February 26, 2011, two years after his claim accrued. As this lawsuit was not filed until July 25, 2011, the magistrate judge correctly concluded the lawsuit is barred by limitations.

ORDER

Accordingly, the objections filed by petitioner are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is hereby **ADOPTED** as the opinion of the court. A final judgment shall be entered dismissing this lawsuit in accordance with the recommendation of the magistrate judge.

SIGNED this the 4 day of January, 2021.



Thad Heartfield
United States District Judge